



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2004

Ms. Luz E. Sandoval Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza - 9th Floor
El Paso, Texas 79901

OR2004-10677

Dear Ms. Walker:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 214906.

The City of El Paso Police Department (the "department") received a request for (1) a "protective order, assault-family violence" incident report involving a named arrestee, and (2) all incident reports involving a named individual. You inform us that you will release some of the requested information. However, you claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note that some of the submitted information is not responsive to this request. The Act does not require the department to release information that did not exist when it received this request or to create responsive information.¹ The information submitted as Exhibit C was created after the department received this request for information. Thus, Exhibit C is not responsive to this request. Accordingly, this decision does not address the public availability of any of the information in Exhibit C, and the department need not release any of that information.

¹ See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

You argue that the a portion of the information is excepted from disclosure by section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses the common-law right to privacy. *See* Gov’t Code § 552.101. Under *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), where an individual’s criminal history information has been compiled or summarized by a governmental entity, the information takes on a character that implicates the individual’s right of privacy in a manner that the same individual records in an uncompiled state do not. Thus, when a requestor asks for unspecified information concerning a certain named individual and that individual is a possible suspect, arrestee, or defendant, a law enforcement agency must withhold this information under section 552.101 because that individual’s privacy right has been implicated. *See id.* In this case, we believe that the named individual’s right to privacy has been implicated. Thus, where the named individual is a possible suspect, we conclude that you must withhold such information under common-law privacy as encompassed by section 552.101 of the Government Code and the reasoning expressed in *Reporters Committee*. *See id.*

However, we note that when a requestor asks for information relating to a particular incident, the request does not implicate the privacy concerns expressed in *Reporters Committee* because complying with the request does not require the governmental body to compile unspecified records. You assert that the present request requires the department to compile law enforcement information with regard to a named individual and therefore implicates the individual’s privacy interests. We note, however, that part of the request is not a request for unspecified information. Rather, the requestor seeks information relating to a specific incident. Furthermore, the requestor has provided the complainant’s and arrestee’s names, the particular crime involved, and the existence of a protective order in order to assist the department in locating the requested information. Thus, this request for information does not implicate privacy interests for purposes of *Reporters Committee*, and therefore report number 02-354157 is not excepted from disclosure on privacy grounds under section 552.101.

We note that report number 02-354157 contains a social security number. A social security number or “related record” may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number in the file is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Section 552.130 of the Government Code excepts from disclosure information that relates to: “(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; (2) a motor vehicle title or registration issued by an agency of this state; or (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.” Gov’t Code § 552.130(a)(1)-(3). To the extent the driver’s license we have marked was issued by the State of Texas, it must be withheld under section 552.130.

In summary, we conclude that you must withhold any information where the named individual is a possible suspect, arrestee, or defendant, except for report number 02-354157, under common-law privacy as encompassed by section 552.101 of the Government Code and the reasoning expressed in *Reporters Committee*. The social security number contained in report number 02-354157 may be confidential under federal law. To the extent the driver’s license number contained in report number 02-354157 was issued by the State of Texas, it must be withheld under section 552.130 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

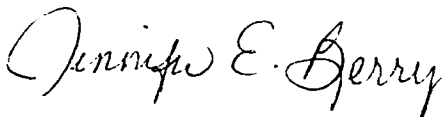
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/krl

Ref: ID# 214906

Enc: Submitted documents

c: Mr. Jose Montes, Jr.
1155 Westmoreland Drive, Suite 120
El Paso, Texas 79925
(w/o enclosures)